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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

ALGERIA

[13 February 1991]

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INTRODUCTION

1. Algeria was one of the first signatories of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (26 November 1985). The Convention was ratified by Presidential Decree No. 89-66 of 16 May 1989 following approval by the National People's Assembly (Act No. 89-10 of 25 April 1989 published in Journal Official No. 17 of 26 April 1989). Under article 122 of the Constitution, treaties relating to the status of persons are ratified by the President of the Republic following express approval by the National People's Assembly. The Convention against Torture entered into force for Algeria on 12 October 1989.

2. Algeria did not make any reservations at the time of signature and ratification of the Convention. It also recognized the powers vested in the Committee against Torture by articles 20, 21 and 22 of the Convention.

3. In submitting the initial report under article 19 of the Convention, it is important to provide an introductory explanation of ongoing reforms in Algeria which will make it possible to understand the scope of the changes that have taken place, changes designed to strengthen the country's democratic structures, improve the functioning of its institutions and consolidate the rule of law, which draws its strength from the affirmation of rules laying the foundations for a multi-party system and the separation of powers and attaching particular importance to the participation of citizens in the conduct of public affairs and to the protection and promotion of their rights and freedoms.

4. The reforms carried out in Algeria in the 1980s related to the country's economic, social and political life. A number of measures were taken in the economic sector with the aim of improving the country's system of production. The objective was to monitor methods of management and to adapt the system to social, economic and technical change. Considerable changes took place in the political sphere as a result of the establishment of a multi-party system by the Constitution adopted by popular referendum on 23 February 1989.

5. As is pointed out in the preamble to the Constitution, "the people intends", in adopting this basic text, which is "the product of its own genius, the reflection of its aspirations, the fruit of its determination and the result of far-reaching social changes ... to establish even more firmly the rule of law and to endow itself with institutions which are based on the participation of citizens in the conduct of public affairs and which will bring about social justice, equality and the freedom of each and every individual".

6. The President of the Algerian Republic, Mr. Chadli Bendjedid, marked the anniversary of the adoption of the Constitution in the following terms:

> "The anniversary of the adoption of the Constitution gives me an opportunity today to evaluate what we have accomplished and what still remains to be done.

Far-reaching social changes, which are the result of the economic and social advances made over the past two decades, have given rise to new aspirations and demands by citizens, as well as to imbalances and disturbances in the functioning of society that have constantly had to be dealt with.

We have thus been called upon, individually and collectively, to assume responsiblity, resolutely and with determination for the political and economic initiatives required by this dynamic of change.

Strengthened by the confidence and support of the majority in taking these changes to their limits, I have had the task of organizing the necessary consultations to enable the people to make clearly known its wishes and its choices for the future.

Today, we all can see that the development of the fundamental freedoms embodied in the Constitution is firmly under way and that the new society is taking shape more and more every day. Citizens have taken over the associations they are setting up as a result of deep-seated aspirations for freedom of association, assembly and expression, thereby demonstrating the extent and depth of the open debate which is promoting general progress by guaranteeing creative convergence".

7. The efforts made to strengthen the rule of law and consolidate democratic institutions have been supported by various measures taken in order to translate the constitutional principles that have been proclaimed into law and into fact, and to strengthen the machinery for the exercise of democratic rules, as well as the protection of human rights and public freedoms. These measures will be considered in connection with the comments on the articles of the Convention. At this stage, the following main trends may be identified:

(a) The 1989 Constitution provides for the rule of law, political pluralism, freedom of association, the separation of the executive, legislative and judicial powers and the principle of the independence of the judiciary. Institutional controls have been strengthened with the establishment of the Constitutional Council, which is responsible for guaranteeing compliance with the Constitution and monitoring referendums, the election of the President of the Republic and elections to the legislature. It also rules on the constitutionality of treaties, laws and regulations. The Constitutional Council was set up by the President of the Republic on 8 March 1989 and has handed down a number of decisions and opinions on the election code, the status of deputies and the rules of procedure of the National People's Assembly (see below);

(b) The 1989 Constitution broadens the scope of the exercise of human rights and fundamental freedoms, which was restricted under the preceding Constitution. The rights recognized by the 1976 Constitution have been reaffirmed and the modalities for their exercise strengthened and guaranteed by new constitutional provisions. "Henceforth, their applicability derives directly from the Constitution and the system of control which guarantees pluralism and the separation of powers" (from the opening statement by the President of the Constitutional Council in fascicle No. 1 published by the Constitutional Council);

(c) Emergency procedures and courts have been reviewed, with, in particular, the abolition of the State Security Court and the referral of pending cases to the courts which would normally have jurisdiction (Act No. 89-06 of 25 April 1989);

(d) Revision of the Code of Criminal Procedure so that any crime, whatever its nature, may be tried in ordinary proceedings and courts. The economic division of the criminal court has thus been abolished (Act No. 90-24 of 18 August 1990 amending and supplementing Order No. 66-155 of 8 June 1966 on the Code of Criminal Procedure);

(e) Reconsideration of the content of legislation in order to remove legal rules inherited from the colonial period. In this connection, the penalty of penal relegation was considered to be inhuman and contrary to our values. It was therefore abolished by Act No. 89-05 of 1989 amending article 9 and repealing articles 10 and 60 of Order No. 66-156 of 8 June 1966 on the Penal Code;

(f) Amendment of the provisions of the Code of Civil Procedure relating to administrative litigation in order to make appeal procedures less complicated and the system of justice more accessible (Act No. 90-23 of 18 August 1990 amending and supplementing Order No. 66-154 of 8 June 1966 on the Code of Civil Procedure;

(g) Revision of the provisions of the Code of Criminal Procedure in order to guarantee fuller protection of the fundamental rights and freedoms of citizens, particularly by strengthening the rights of the defence and guarantees in respect of the use of police custody and pre-trial detention procedures (Act No. 90-24 of 18 August 1990);

(h) Revision of the judiciary regulations and promulgation of Act No. 89-21 of 12 December 1989 on new judiciary regulations to give full effect to the provisions of the 1989 Constitution, which establishes a multi-party system and the separation of powers and provides for the independence of the judiciary, which protects society and freedoms and guarantees for all persons protection of their basic rights (articles 40, 129 and 130 of the Constitution). In this connection, the recent judiciary regulations confirm the new functions of judges, emphasizing the resulting rights and obligations, guaranteeing their impartiality and protecting them against any form of pressure or interference which may be prejudicial to the exercise of their profession and their free will. The new regulations thus embody the principle of the non-removability of judges and their right to be protected against all forms of pressure or interference, as well as against threats, affronts, insults, defamation and attacks of any kind. Judges have trade union rights, but are prohibited from joining any political association in order to guarantee their impartiality. Judges may, if they consider that their rights have been violated, bring the matter before the Supreme Council of Justice, whose composition and functioning have been reviewed in the light of the above-mentioned constitutional principles;

(i) The organization and functioning of the Supreme Court have been revised to enable it to perform its function of safeguarding the rule of law and the independence of judiciary (Act No. 89-22 of 12 December 1989 on the organization and functioning of the Supreme Court). Executive

Decree No. 90/141 of 19 May 1990 also established the Supreme Court Review in order to disseminate information on law enforcement and to standardize the decisions of the courts and tribunals;

(k) Promulgation of acts organizing the free exercise of the fundamental rights recognized by the Constitution (Act No. 90-07 of 3 April 1990 on information; Act No. 90-14 of 2 June 1990 on the exercise of trade union rights; Act No. 89-11 of 5 July 1989 on political associations; the recent revision (Act No. 90-31 of 4 December 1990) of the act on non-political associations simplifying the formalities relating to their establishment and, in particular, abolishing the requirement under Act No. 87-15 of 21 July 1987 for prior approval);

(l) Amnesty for crimes and offences against persons and property committed with the use of force during or on the occasion of riots or violent gatherings, for certain places from 1 April 1980 to 11 July 1988 and throughout the national territory from 1 to 31 October 1988 (Amnesty Act No. 90-19 of 15 August 1990 and Act No. 90-20 of 15 August 1990 on compensation resulting from the Amnesty Act).

8. Legislative texts and regulations continue to be reviewed to bring them into line with the new aspirations of Algerian society. A draft text revising the lawyers' regulations is now under review by the National People's Assembly, which is also considering some proposed amendments to the Elections Act. Several sectoral and inter-sectoral commissions are also redrafting legal texts in order to strengthen the legislative foundations which guarantee the rule of law and, in a democracy, serve as the basis for the expression and exercise of the rights solemnly proclaimed by the Constitution.

9. In early December 1990, there were 33 authorized political parties, as well as 6 pending applications. There are 28,500 non-political associations, including two human rights leagues, an Algerian section of Amnesty International and the national Committee against Torture.

I. INFORMATION OF A GENERAL NATURE

A. General legal framework for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

10. Algeria's position on the question of torture has always been and still is one of firm and unequivocal condemnation of this intolerable practice and all the forms it may take. Algeria, whose collective conscience is still alive to the ill-treatment suffered by the Algerian people during its struggle for national liberation, cannot allow the use of torture. Since the country's independence, the prohibition of torture has been a constitutional principle. The 1989 Constitution reaffirms this principle and strengthens the guarantees for the protection and implementation of the human rights it proclaims.

11. The preamble of the 1989 Constitution states that "the Constitution is the all-pervading basic law which guarantees individual and collective rights and freedoms, protects the rule of the free choice of the people and establishes the legitimacy of the exercise of powers. It guarantees legal

protection and control of the actions of the authorities in a society characterized by the rule of law and the development of the human being in all his dimensions". It contains an entire chapter on rights and freedoms:

Article 28

Citizens shall be equal before the law, without any discrimination based on birth, race, sex, opinion or any other personal or social status or circumstance.

Article 30

Institutions shall be designed to ensure the equality of rights and duties of all citizens by eliminating obstacles to the development of the human person and to genuine participation by all in political, economic, social and cultural life.

Article 31

Fundamental freedoms and human rights shall be guaranteed. They are the common heritage of all Algerians, who have the duty to hand it down from generation to generation in order to preserve its integrity and inviolability.

Article 32

The individual and associative protection of basic human rights and individual and collective freedoms shall be guaranteed.

Article 33

The State shall guarantee the inviolability of the human person. Any form of physical or mental violence shall be prohibited.

Article 34

Violations of rights and freedoms and physical or mental attacks on the integrity of the human being shall be punishable by law.

Article 35

Freedom of conscience and freedom of opinion shall be inviolable.

Article 36

Citizens shall be guaranteed freedom of intellectual, artistic and scientific creation. Copyright shall be protected by law. A publication, recording or any other medium of communication or information may be seized only by court order.

Article 37

The private life and honour of citizens shall be inviolable and protected by law. Secrecy of private correspondence and communication in all their forms shall be guaranteed.

Article 38

The State shall guarantee the inviolability of the home. No search may take place except under and in accordance with the law. A search may be carried out only by written order issued by the competent judicial authority.

Article 39

Freedom of expression, association and assembly shall be guaranteed to citizens.

Article 40

The right to establish political associations shall be recognized. However, this right may not be invoked to violate fundamental freedoms, national unity, territorial integrity, the independence of the country or the sovereignty of the people.

Article 41

Any citizen who enjoys civil and political rights shall be entitled to freedom to choose his place of residence and to freedom of movement within the national territory. He shall be guaranteed the right to enter and leave the national territory.

Article 42

Every person shall be presumed innocent until proved guilty by a lawful court and with all the safeguards required by law.

Article 43

No one shall be held guilty except under a law duly promulgated prior to the commission of the act of which he is accused.

Article 44

No one may be prosecuted, arrested or detained except in cases determined by law and in accordance with the procedures which the law prescribes.

Article 45

During criminal investigations, police custody shall be monitored by the courts and may not last for more than 48 hours. A person held in police custody shall be entitled immediately to contact his family. The period of police custody may be extended only in exceptional cases and in the manner prescribed by law. Upon completion of the period of police custody, a medical examination of the person concerned must be carried out if he so requests and he shall, in any event, be informed of this possibility.

Article 46

Any miscarriage of justice shall give rise to compensation by the State. The terms and conditions of compensation shall be determined by law.

Article 47

Any citizen fulfilling the requirements established by law shall be entitled to vote and to be elected.

Article 48

Equality of access to Government functions and posts shall be guaranteed to all citizens, without any conditions other than those established by law.

Article 49

Private property shall be guaranteed. The right to inherit shall be guaranteed. Wakf property (trusts) and foundations shall be recognized: the purpose for which they are intended shall be protected by law.

Article 50

The right to education shall be guaranteed and education shall be free of charge under the conditions established by law. Basic education shall be compulsory. The State shall organize the system of education. The State shall ensure equality of access to education and vocational training.

Article 51

All citizens shall be entitled to protection of their health. The State shall ensure the prevention of and action to combat epidemic and endemic diseases.

Article 52

All citizens shall be entitled to work. The right to protection, safety and hygiene at work shall be guaranteed by law. The right to rest shall be guaranteed: the manner in which this right shall be exercised shall be determined by law.

Article 53

Trade union rights shall be recognized to all citizens.

Article 54

The right to strike shall be recognized; it shall be exercised in conformity with the law. The law may prohibit or restrict the exercise of this right in the areas of national defence and security or for any public services or activities of vital importance to the community.

Article 55

The family shall benefit from the protection of the State and society.

Article 56

The living conditions of citizens who cannot yet, can no longer or will never will be able to work shall be guaranteed.

12. As a result of the proclamation of these rights by the Constitution, which subjects their exercise to legal restrictions only in very few cases, their applicability derives directly from Algeria's fundamental law, which strengthens guarantees for their protection. Since constitutional provisions are the highest in the hierarchy of legal rules, any legislative text or regulation which is contrary to them would be declared unconstitutional.

13. It is also pointed out that the following have been established as constitutional principles:

(a) The guarantee of the inviolability of the human person;

(b) The prohibition of any form of violence, whether physical or mental;

(c) Punishment by law of violations of rights and freedoms, as well as of physical or mental attacks on the integrity of the human being;

(d) Guarantees relating to police custody (monitoring by the courts; maximum period of 48 hours; right of the person in police custody immediately to contact his family; compulsory medical examination of the person concerned if he so requests and, in any event, duty to inform him of this possibility).

14. The Constitutional Council is responsible for ensuring respect for the Constitution and determines the constitutionality of treaties, laws and regulations (arts. 153 and 155 of the Constitution). When the Constitutional Council decides that a legislative or regulatory provision is unconstitutional, the latter ceases to have effect from the day of the decision of the Council (art. 159 of the Constitution).

15. The effectiveness of the protection of the rights recognized by the Constitution is further strengthened by the multi-party system, the separation of powers and the freedom of association for which the Constitution provides.

16. Furthermore, any violation of the human rights and freedoms provided for in the Constitution is sanctioned and severely punished under Algeria's legislation. Thus, one chapter of the Penal Code is devoted to crimes and offences against the Constitution, and includes one section on the violation of freedoms, as well as specific provisions concerning Government officials and employees who incur their personal civil liability as well as that of the State if they order the Commission of or actually commit either an arbitrary act or one which violates individual freedoms or the civil rights of citizens. In addition, torture and any other violation of the physical integrity of human beings are punishable under many provisions of the Penal Code. These provisions will be discussed under the comments on articles of the Convention. For the present, a few examples will suffice: articles 254 to 280 of the Penal Code provide for punishment of murder and other capital offences and intentional acts of violence. Intentional homicide is classified as premeditated murder, and therefore as first degree murder (assassinat), if it is committed by means of an ambush (an ambush being itself defined as consisting of the act of waiting for a person for a long or short period in one or several places for the purpose of either killing him or assaulting him) or if the accused uses torture or commits acts of cruelty in the perpetration of his offence. The Penal Code also makes punishable intentional acts of violence, castration and all forms of physical or moral threat.

17. Various fundamental and sectoral laws protect the rights of the individual, for example the Code of Penal Procedure (rights to defence and monitoring of penal procedure); the Civil Code (protection of legally incompetent persons and minors; prohibition of relinquishment of one's personal freedom; annulment of contracts on grounds of violence, etc.); the Prison Administration and Re-education Code; the Protection of Children and Adolescents Order; the Information Act (publications must not contain any illustration, account, report or inserted text which violates human rights; protection against slander, etc. ...); the legislation on protection and promotion of health (for example, the provisions governing the removal of tissues and organs; experiments on human beings; the duty of medical practitioners to report any ill-treatment of minors and persons deprived of freedom which they have observed in the practice of their profession); the establishment of a national council of ethics for the health sciences, etc. ...).

B. Conventions to which Algeria is a party

18. Furthermore, Algeria is a party to many international instruments proclaiming a number of rights which contribute to respect for the dignity and integrity of the human person. The instruments ratified by Algeria include:

The African Charter of Human and People's Rights of 1981;

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949;

The Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948;

The Convention relating to the Status of Refugees of 28 July 1951;

The Convention relating to the Status of Stateless Persons of 28 September 1954;

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 7 September 1954;

The International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965;

The International Covenant on Economic, Social and Cultural Rights of 16 December 1966;

The International Covenant on Civil and Political Rights of 16 December 1966;

The Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966;

The Protocol relating to the Status of Refugees of 16 December 1966;

The International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973;

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

The International Convention against Apartheid in Sports of 10 December 1985;

The 1949 Geneva Conventions and the 1977 Additional Protocol.

C. Algeria's international commitments

19. Under article 122 of the Constitution, treaties relating to the status of persons are ratified by the President of the Republic after they have been expressly approved by the National People's Assembly. Article 123 adds that "treaties ratified by the President of the Republic, under the conditions specified by the Constitution, take precedence over the law". Since the Convention against Torture is a treaty concerning the status of persons, it was submitted for approval by the National People's Assembly and then ratified by the President of the Republic. No special procedure is required for the incorporation of an international convention into the Algerian system of law. Such a convention becomes an integral part of Algerian law once it has been approved and ratified in accordance with the law. Furthermore, under the Constitution it takes precedence over Algerian legislation.

20. As a result, treaties which have been duly ratified rank second in the hierarchy of legal provisions, after the Constitution and before the law. A law which is contrary to an international convention cannot be applied because the provisions of the convention take precedence over such a law.

21. The provisions of a convention which has been ratified in accordance with the law may be invoked directly before the courts.

22. The Constitutional Council in its decision No. 1 D.L.C.C. 89 of 20 August 1989 concerning the electoral code clearly reaffirmed the constitutional principle of the precedence over the law of treaties which have been duly ratified, concluding therefrom that every Algerian citizen is entitled to invoke them before the courts:

> "Whereas, every convention becomes an integral part of Algerian law after it has been ratified and published and whereas under article 123 of the Constitution it takes precedence over Algerian law and any Algerian citizen may invoke it before the courts, and whereas this is the case of the United Nations Covenants of 1966 approved by Act No. 89-08 of 25 April 1989, to which Algeria acceded by Presidential Decree No. 87-67 of 16 May 1989, as well as of the African Charter of Human and People's Rights ratified by decree No. 87-37 of 3 February 1987, and whereas these legal instruments formally prohibit discrimination of any kind" (extract from the above-mentioned decision).

D. Judicial, administrative and other authorities competent in respect of the matters covered by the Convention

The Constitutional Council

23. A matter may be referred to the Constitutional Council either by the President of the Republic or by the President of the National People's Assembly (art. 156 of the Constitution). The Council of seven members, two of whom are appointed by the President of the Republic, two of whom are elected by the National People's Assembly and two of whom are elected by the Supreme Court from among its members.

24. The Constitutional Council may decide to declare unconstitutional any legislative or regulatory provision which conflicts with the Constitution. We have seen that the Constitution forbids any form of physical or mental violence, ensures the inviolability of the human person and devotes an entire chapter to human rights. The Constitutional Council therefore has a particularly broad scope for action in monitoring laws and regulations concerning human rights, inasmuch as a legislative or regulatory provision which is found unconstitutional by the Constitutional Council becomes ineffective from the day of the Council's decision.

25. The Constitutional Council also has competence to monitor certain procedures which may affect the functioning of the national institutions and the rights of the citizen. Thus articles 84, 85, 86, 87 and 91 require that the Constitutional Council should be consulted and its opinion obtained prior to a declaration of the incapacity of the President to perform his duties or of a state of siege or of a state of exception and before the signature of any armistice agreement or peace treaty. In the case of a constitutional amendment, the President of the Republic may directly promulgate the law containing the amendment (i.e. without submitting it to a popular referendum) only if it has been approved by three quarters of the members of the National People's Assembly and if in the justified opinion of the Constitutional Council the draft constitutional amendment does not adversely affect the general principles by which Algerian society is governed or the rights and freedoms of man and the citizen, nor in any way disturbs the fundamental balance of powers and institutions (art. 164 of the Constitution).

26. Since it was established on 8 March 1989, the Constitutional Council has handed down a number of decisions and opinions on matters referred to it by the President of the Republic. These include:

Decision No. 1 D.L.C.C. 89 of 20 August 1989 concerning the electoral code;

Decision No. 2 D.L.C.C. 89 of 30 August 1989 concerning the status of deputies;

Opinion No. 1 L.C.C. 89 of 28 August 1989 concerning the rules of procedure of the National People's Assembly;

Decision No. 3 D.R.I.C.C. of 18 December 1989 concerning the rules of procedure of the National People's Assembly;

Opinion No. 2 A.L.C.C. 89 of 9 December 1989 concerning the law postponing the elections for renewal of the Communal People's Assemblies;

Opinion No. 3 A.L.C.C. 89 of 9 December 1989 concerning the law postponing the elections for renewal of the Wilaya People's Assemblies.

27. The judicial, administrative and other authorities are required to respect the law and Algeria's international commitments. The Constitution devotes one chapter to obligations, which includes:

Article 57

"... everyone is presumed to know the law".

Article 60

"... in exercising his freedoms everyone shall respect the rights of others recognized by the Constitution, especially the right to honour, to privacy and to protection of the family, young persons and children.

28. The Algerian courts shall play a predominant role in the adoption of measures to prevent torture and to punish acts contributing to torture. The judicial system and the principles underlying it shall strengthen the power of the courts to act.

1. Independence of the judiciary

29. Several articles of the Constitution establish the principle of the independence of the judiciary:

Article 129

The judiciary shall be independent.

Article 130

The judiciary shall protect society and individual freedoms. It shall guarantee for everyone the protection of his fundamental rights.

Article 132

Justice shall be administered on behalf of the people.

Article 136

All competent State bodies are required always, everywhere and in all circumstances to ensure the execution of judicial decisions.

Article 137

"Justice shall be rendered by judges. They may be assisted by people's assessors in the manner prescribed by law".

Article 138

"Judges shall obey only the law".

Article 139

Judges are protected against all forms of pressure, interference or manoeuvres which may be prejudicial to the performance of their duties or to their independence.

30. The President of the Republic, in an address to the National Conference of the Judiciary in February 1990, highlighted the responsibility of the Judiciary in the following terms:

"Need I remind you, representatives of the judiciary, that, more than ever, you represent society in its call on the system of justice to defend its institutions and freedoms.

This system is today vested with the power to regulate society as a whole by settling any disputes which may arise between the different political, economic and social interests. There is no doubt whatsoever that the relationship between the Government and the citizen, freedom to engage in political and electoral competition and the exercise of individual rights and freedoms limited only by the rights and freedoms of others require decisions that are unhampered by pressure from groups or individuals. Such decisions have now been made possible by your independence.

At the workplace, where human relationships are established on the basis of agreements negotiated with employers through freely chosen representatives, it is now the responsibility of the system of justice to impose respect for law and settle disputes between individuals or groups, taking care to preserve social peace while at the same time protecting the rights of the individual.

Similarly, the organization of the economy, whose underlying principles are free trade and civil law as it applies to public as well as private enterprises, requires the authority which you alone possess to settle economic and commercial disputes.

This broadened scope for your action and the complete independence of your decisions have placed upon your shoulders a major responsibility for promoting and ensuring success of the new rules for the functioning of society."

31. The judicial system in Algeria is based upon the principles of separation of powers. The judiciary is independent and judges are governed only by the law, which is administered on behalf of the people. Act No. 89-21 of 12 December 1989 on the regulations governing the judiciary incorporates the principles set forth in the Constitution. Several articles of this Act confirm the independence of judges.

Article 7

In all circumstances, judges are bound to secrecy in order to ensure their independence and impartiality.

Article 8

Except as otherwise provided by law, judges are required to respect the secrecy of deliberations and shall refrain from communicating any report or information concerning court cases.

Article 9

The judge's function is incompatible with the exercise of any electoral mandate at the national or local level. The judge is forbidden to join any political association. A judge shall notify the Minister of Justice of his membership in any other associations or groups so that the Minister may take any necessary measures to preserve the independence and dignity of the judiciary.

Article 10

A judge shall be prohibited from taking any action which might obstruct or impede the administration of justice.

32. This law also defines the rights of judges, which include the following:

Article 16

A judge who has served on the bench for 10 years may not be removed from his post nor may he, without his consent, be transferred or appointed to a new post in the Department of Public Prosecutions, in the central Government or in the administrative services of the Supreme Court.

Article 18

Under article 139 of the Constitution, judges are protected against any form of pressures or interference which may be prejudicial to the performance of their duties or their independence.

Article 19

Apart from the protection provided under the Penal Code and special laws, the Government is required to protect judges against threats, affronts, insults, defamation and attacks of any kind which they may encounter in the exercise of their duties.

Article 21

Judges have trade union rights, subject to the provisions of articles 9 and 10 of this Act.

33. The same Act determines the composition, the method of functioning and the powers of the Supreme Council of Justice, which is responsible for ensuring respect for the rights of judges and their career development.

2. Equality of justice; requirement of prohibition by law for an act to constitute an offence and requirement that punishment apply only to the perpetrator of the offence; presumption of innocence; non-retroactivity of the law

34. The Constitution provides as follows:

Article 131

Justice shall be founded on the principles of legality and equality. It shall be equal for all, accessible to all and shall be expressed through respect for the law.

Article 133

Criminal sanctions shall conform to the principles requiring that an act be prohibited by law for it to constitute an offence and that punishment apply only to the perpetrator of the offence.

Article 42

Everyone shall be presumed innocent until proved guilty by a regular court and with all the guarantees required by law.

Article 43

No one may be held guilty except by virtue of a law which was duly promulgated before the act of which he is accused.

Article 44

No one may be prosecuted, arrested or detained except in the cases specified by the law and in the manner prescribed by the law.

35. The Penal Code provides as follows:

Article 1

There can be no offence or punishment or security measure except as provided by law.

Article 2

Penal law shall not have retroactive effect, save where it prescribes a lighter penalty.

Article 3

Penal law shall apply in respect of all offences committed on the territory of the Republic. It shall apply also in respect of offences committed abroad if, under the provisions of the Code of Penal Procedure, they fall within the jurisdiction of the Algerian courts.

36. The principle of non-retroactivity of the law shall apply in civil cases. Article 2 of the Civil Code stipulates: "The law provides only for the future. It has no retroactive effect..."

3. The right to defence

37. The Constitution recognizes the right to defence, which is guaranteed in criminal cases:

Article 142

"The right to defence is recognized. It is guaranteed in criminal cases."

38. Anyone prosecuted before a court shall be entitled to make arrangements for his defence and to be assisted by counsel of his own choosing. Indigent persons may be given the benefit of legal assistance. In some cases, the law requires that defence counsel should accompany the defendant or the accused. The same applies in respect of appearance before a criminal court which has full competence to try individuals who have reached the age of majority for criminal offences referred to it by decision of the indictment division. According to article 271 of the Code of Penal Procedure, "the defendant shall be invited by the president of the court to choose a counsel to assist him in his defence. If the defendant fails to do so, the president of the court shall appoint counsel for him". In connection with the appearance of the defendant, article 292 adds that "the presence of defence counsel to assist the defendant at the hearing is mandatory. If necessary, counsel shall be assigned by the president". Even in a case of in flagrante delicto, a person brought before a court under this procedure must be warned by the president that he is entitled to request time for preparation of his defence. Reference shall be made in the sentence to the warning given by the president and to the response of the defendant (art. 338 of the Code of Penal Procedure).

39. The rights of the defence were strengthened by Act No. 90-24 of 18 August 1990 modifying and supplementing the Code of Penal Procedure. This code has been revised on the basis of a study by a working group including judges, lawyers, representatives of the two Algerian leagues of human rights and of the Algerian chapter of Amnesty International. The provisions of the Code of Penal Procedure were critically reviewed and some of them were subsequently amended with a view to strengthening the rights of the defence.

(a) Additions were made to two sections of article 51 of the Code in order to emphasize the exceptional nature of police custody and the safeguards it must include. The section referring to the medical examination which a person is obliged to undergo after being held in police custody was originally worded as follows: "At the expiration of the period of police custody, the person who has been held shall undergo a mandatory medical examination if he requests it. He shall be informed of this right." This section was amended to read as follows: "At the end of the period of police custody, the person held shall undergo a medical examination, if he requests it himself or through his defence counsel or his family. The examination shall be conducted by the doctor of his choice. He shall be informed of this right."

(b) Regarding searches, domiciliary visits and seizure of evidence, article 64 of the Code, which requires the express consent of the person in whose home the operation takes place, was amended to deal with the problem of persons who are unable to write. The new wording of the article allows a person who is unable to write to be assisted by a third person of his choice in making a written statement of consent or refusal.

(c) The rights of the defendant have been expanded and the difficulties of access to the file on his case have been removed. During the examination proceedings the defence counsel is entitled to have a copy of the file. To this end, an article has been added to the Code of Penal Procedure (art. 68 bis). The fact that the defendant is entitled to make observations in the indictment division will enable the latter to be better informed of the facts of the case and the points of law involved, in addition to the fact that the parties will henceforth be allowed to attend those hearings. Lastly, the defence counsel has been given the right of rejoinder after the office of the public prosecutor. Article 353, paragraph 3, which read "... the defendant shall always have the last word", has been amended to read: "The defendant and his defence counsel shall always have the last word."

4. Remedies

40. The remedies available to a person who claims to have suffered torture or other cruel, inhuman or degrading treatment or punishment are the same as those available under ordinary law. Consequently, the criminal actions authorized by positive criminal law applicable in Algeria should be considered. In addition to the specific provisions of the Penal Code, which provides for punishment of various degrading acts such as injurious behaviour and defamation, violence and striking and wounding as well as torture and cruelty, it is pointed out that the provisions of the Convention Against Torture form an integral part of this body of law and may be directly invoked before the courts (cf. supra, decision of the Constitutional Council). The public right of action to enforce the law is set in motion and exercised by the judiciary in whom it is vested by law. Such action may also be initiated by the injured party who may, moreover, initiate a criminal indemnity action to obtain indemnification. The criminal indemnity action may proceed concurrently with the public action or separately. Moreover, the courts also hear appeals against acts by the authorities, a principle which is enshrined in the Constitution (art. 134). Lastly, appeals and applications for judicial review may be made against the decisions of the courts.

(a) Public right of action

41. The Code of Penal Procedure contains a number of provisions that define the manner in which the public right of action may be initiated.

Article 1

Public right of action to enforce the law is initiated and exercised by the judiciary or officials in whom it is vested by law. It may also be initiated by the injured party, in the manner laid down in this Code.

Article 29

Public right of action is exercised in the name of society by the Department of Public Prosecution, which demands enforcement of the law. The Department is represented in each jurisdiction.

Article 30

The Minister of Justice may denounce breaches of penal law to the procurator general. He may, moreover, require him in writing to initiate proceedings or to have proceedings initiated, or to seize the competent jurisdiction of such written submissions as he deems appropriate.

Article 32

Any established authority, public official or civil servant who, in the exercise of his functions, learns of a crime or offence, is required to inform the Department of Public Prosecution thereof without delay and to transmit to the Department any information, reports and documents relating thereto.

Article 36

The Government Procurator:

Receives statements, complaints and accusations and decides on the steps to be taken in relation to them;

Effects or has effected all the acts required to determine or prosecute breaches of penal law.

(b) Criminal indemnity action and indemnification proceedings

42. Public right of action may be initiated by the injured party, which may moreover institute criminal indemnification proceedings. The Code of Civil Procedure provides as follows:

Article 2

A criminal indemnity action for injury caused by a crime, an offence or a breach of the law may be instituted by anyone who has personally suffered direct injury as a result of the offence. With the exception of the cases covered by article 6, section 3, public right of action may be neither ended nor suspended by discontinuance of the criminal indemnity action.

Article 3

A criminal indemnity action may proceed concurrently with the public right of action and before the same jurisdiction. The jurisdiction shall be competent, regardless of the legal or natural person of civil law responsible for the injury.

Article 4

The criminal indemnity action may also proceed separately from the public right of action. However, a decision on such proceedings before the civil jurisdiction shall be suspended until a final decision has been handed down in respect of the public right of action, if such action has been initiated.

Article 72

Any person who claims to have been injured as a result of a criminal offence may, when filing a complaint, bring a criminal indemnity action before the competent examining magistrate.

(c) Remedies against acts by the authorities

43. Act No. 90-23 of 18 August 1990 amended and supplemented the Code of Civil Procedure in order to make justice more accessible and to simplify both the procedure for appeal against acts by the authorities and for dealing with administrative disputes. Under the previous Act, the procedure was characterized by a centralization of appeals for annulment within the Supreme Court and by slowness due, in particular, to the requirement that all prior remedies, whether discretionary or hierarchical, should be exhausted before contentious remedy is sought. Henceforth, appeals against acts by local authorities are heard by the courts of first instance, subject to appeal to the Supreme Court, in all cases, of whatever nature, in which the State, the wilaya, or an administrative body is a party, in accordance with the following regulations as regards competence:

(a) The following come within the competence of the courts of Algiers, Oran, Constantine, Béchar and Ouargla:

Annulment proceedings against decisions taken by the wilayas;

Appeals relating to interpretation and appeals to assess the lawfulness of the acts of the said authorities;

(b) The following come within the competence of the 22 courts having an administrative division:

Annulment proceedings against decisions taken by the presidents of the communal peoples' assemblies and by public administrative agencies;

Appeals relating to interpretation and appeals to assess the lawfulness of acts by the said authorities;

Litigation relating to the civil liability of the State, of the wilaya, of the commune or of a public administrative agency, for the purpose of obtaining compensation for injury.

(c) The Supreme Court has jurisdiction over the following:

Annulment proceedings for illegality against decisions taken by the central administrative authorities;

Annulment proceedings against regulatory or individual decisions by the central administrative authority;

Interpretation proceedings and proceedings to assess the lawfulness of acts for which litigation is within the jurisdiction of the Supreme Court.

(d) Prior remedies (discretionary and hierarchical) were abolished and replaced by the obligation for the judge to attempt to reconcile the parties when appeals are brought before the courts. They were retained only for litigation coming before the Supreme Court.

5. The current situation

44. As has been shown by the introductory remarks and the information provided in part I of this report, Algeria, which has ratified without reservation the Convention against Torture and accepted all the control mechanisms established by the Convention, has carried out a systematic review of the legislation in force in order fully to implement the formally established constitutional principles. The reform process is continuing, with the active participation of all sectors of civil society, which is organized in political parties and non-political associations that enjoy total freedom of expression and assembly. Debates on human rights take place in the open in Algeria. The issue of human rights is included in the programmes of most political parties, and during the year some of them have organized symposiums on such questions as the rights of the child, torture, and Islam and human rights. A number of Algerian associations actively promote the defence of human rights without any form of restriction. Mention should be made, in particular, with regard to the specific issue of torture, of the National Committee against Torture, which has been officially approved and which held its constitutive assembly on 30 April 1989, setting itself the following objectives:

(a) To inform public opinion and to help to educate and develop an awareness among citizens to ensure the implementation of the constitutional principles guaranteeing "the inviolability of the human person" and prohibiting "any form of physical or moral violence";

(b) To inform the authorities and public opinion of any case in which these principles are violated;

(c) To provide material, legal and moral support to the victims of torture or ill-treatment.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

Article 2

45. This article, requires each State Party to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instabilty or any other public emergency may be invoked as a justification of torture. An order from a superior officer or a public authority may not be invoked as a justification of torture.

46. In Algeria, the prohibition of torture is a constitutional principle and a variety of legislative and other measures have been adopted fully to ensure the implementation of this prohibition in law and in practice. Moreover, Algeria is a party to many international instruments, including the African Charter on Human and Peoples' Rights, the 1966 Covenants, the International Convention on the Elimination of All Forms of Racial Discrimination and the 1949 Geneva Conventions, which contain specific provisions relating to torture and ill-treatment. Treaties duly ratified by Algeria form an integral part of the country's domestic law and may be invoked before its courts.

47. All legislative and regulatory texts are inspired by the principle of a total prohibition of torture and the principle of respect for the dignity and the physical and moral integrity of the human person. Moreover, acts of torture constitute offences under criminal law (see infra, commentary on art. 4). No provision of the law may authorize an agent of the State to order or carry out acts of torture or other forms of violence or ill-treatment. Furthermore, the Penal Code and various other specific laws, such as the Penal Institutions and Re-education Code, punish and/or prohibit abuses of authority prejudicial to the freedoms and dignity of human beings (see infra, commentaries on arts. 15 and 16).

48. Current legislation helps, moreover, to prevent and avert any acts of torture. It has recently been amended (see supra, the relevant observations in part I of the report) for the purpose of strengthening measures to protect the rights of the individual.

49. Among the preventive measures to whose implementation the authorities devote particular attention are the monitoring of conditions of detention in prisons (improvement of living conditions and emphasis on the re-education, rehabilitation and social reinsertion of detainees), supervision (more frequent visits to places of detention by authorized judges, authorization of visits to penal institutions by human rights associations), and the training of prison and police personnel (see infra, commentaries on arts. 10 and 11).

50. The rules that apply to the treatment of detainees are laid down in Order No. 72-2 of 10 February 1972 establishing the Penal Institutions and Re-eduction Code; Order No. 72-3 relating to the protection of children and adolescents; Decree No. 72-35 of 10 February 1972 establishing a committee for the co-ordination and promotion of prisoners' re-education and work; Decree No. 72-36 of 10 February 1972 relating to the observation and orientation of prisoners.

51. The preamble to the Penal Institutions and Re-education Code reasserts Algeria's attachment to respect for individual freedoms and to the principle of the legality of penalties, the upholding and enforcement of which is vested in the judiciary; it also states that, in determining the regulations applicable to the treatment of detainees, it follows the recommendations of the United Nations. In article 1 the Code emphasizes the objective of enforcement of criminal sanctions, as a means of defending society but also of contributing to the re-education of offenders and helping them to readjust in order to return to their place in their family, at work and in society. In article 2, it stipulates that prisoners shall be deprived of the exercise of their rights only in so far as is necessary to achieve the objective of the sentences imposed and in accordance with the law. These provisions ensure the protection of detainees, who are a particularly vulnerable category of

persons, against torture and all similar acts and practices or acts of an inhuman, cruel or degrading nature. Other provisions of the Code provide even greater protection, as illustrated below:

Prison organization is based on the principle of the individualization of sentences and of treatment. Accordingly, one national and two regional observation and orientation centres have been established. Prisoners are sent to and classified within prisons on the basis of their penal status, the seriousness of the offence, their age, their personality and the extent to which they have reformed. After their stay in the centre, prisoners are sent either to a closed prison, or to another institution within the progressive system (outside work site; restricted freedom; open prison). The closed prisons include two types of specialized centres, one for women the other for minors;

No administrative official, or official responsible for the re-education and social rehabilitation of prisoners may, under penalty of prosecution for arbitrary detention, detain a person without a proper detention order or a definitive sentence previously recorded in the prison register referred to in the preceding article (Code, art. 14).

The implementation of criminal sanctions may be temporarily postponed in certain cases, in particular in the case of a serious illness incompatible with a prison sentence, a death in the family, if the prisoner has to take an important examination, or, in the case of the imprisonment of spouses, if their absence would cause irreparable harm to minor children, if a woman is pregnant or the mother of a child less than two years of age, etc. (Code, art. 16);

In closed régimes, the duration of solitary confinement may not exceed one tenth of the length of the sentence, or three years in the case of persons sentenced to life imprisonment (Code, arts. 35 and 36). Dangerous prisoners may be kept in isolation only by a decision of the visiting magistrate, who shall determine the duration of this measure (Code, art. 37).

The Code devotes a whole section (arts. 41 to 73) to the conditions of detainees and to their rights and duties, providing, in particular, as follows: The right to hygiene and to hygienic buildings and places of detention; the right to free medical assistance; the right to healthy and adequate food; the right to visits. Neither a prohibition on communicating nor sanctions of any kind may suppress or restrict the detainee's right freely to communicate with his counsel, his right to correspondence, etc.;

The Code focuses on measures for the rehabilitation and education of detainees: organization of literacy courses, general instruction, vocational training and the possibility of taking higher education courses by correspondence. Diplomas obtained must never mention the fact that the holder is a prisoner. Subject to provisions relating to order or security within prisons, labour legislation on the hours of work, hygiene and security extends to detainees in employment. Furthermore, the working hours and conditions of prison labour used on outside work sites are subject to the legislation applicable to free workers. Specific measures apply to the rehabilitation of minors, who are, moreover, held in specialized centres.

52. As regards any exceptional circumstances that might be invoked to justify torture, it should be pointed out that in Algeria there is no legal or normative provision to justify the use of a practice which is categorically prohibited. Algeria unreservedly upholds the fundamental principle established by the Convention that no circumstances whatsoever may be invoked as a justification of torture. Furthermore, an order from a superior officer or public authority may not be invoked as a justification of torture.

Article 3

53. Article 3 provides that no State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

54. The Algerian Constitution provides as follows:

Article 64

The person and property of all foreigners who are lawfully on the national territory are protected by the law;

Article 65

No one may be extradited except by application of the law on extradition;

Article 66

In no case may a political refugee legally entitled to the right of asylum be handed over or extradited.

55. Extradition is governed by the Code of Penal Procedure which specifies the conditions for extradition "except where otherwise provided under diplomatic treaties or agreements" (Code of Penal Procedure, art. 694). Article 698 of the Code also states that extradition shall not be granted in the following cases:

(a) If the person whose extradition is sought was an Algerian national at the time of the offence for which the extradition is requested;

(b) If the crime or offence is of a political nature or if the circumstances are such that the extradition is sought for political reasons;

(c) If the crimes or offences were committed on Algerian territory;

(d) If the crimes or offences, although committed outside Algerian territory, have given rise to prosecution and final judgment on Algerian territory;

(e) If, pursuant to the law of the applicant State or of the respondent State, prescription regarding proceedings has come into effect prior to the application for extradition, or prescription regarding the sentence prior to the arrest of the individual whose extradition is sought, and in general, whenever public right of action of the applicant State has expired;

(f) If an amnesty has been declared in the applicant State or in the respondent State provided, in the latter case, that the offence is among those that may be prosecuted in the latter State when they have been committed outside the State's territory by a foreigner.

56. Furthermore, Algeria is a party to the 1951 Convention relating to the Status of Refugees and to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, respects its obligations under these Conventions and refrains from returning ("refouler") refugees or asylum-seekers to countries in which they might be prosecuted.

Article 4

57. This article requires each State party to ensure that all acts of torture are offences under its criminal law and to make such offences punishable by appropriate penalties which take into account their grave nature.

58. The Penal Code provides for the punishment of acts of torture and other forms of violence and ill-treatment. Articles 254 to 280 of the Penal Code provide for punishment for murder and other capital crimes and acts of violence. Acts of torture constitute a capital offence punishable by the death penalty.

Article 261 prescribes the death penalty for anyone guilty of murder;

Article 262 provides that "any offender, whatever his crime, who uses torture or cruelty to commit it shall be deemed guilty of murder for the purposes of punishment."

Furthermore, article 255 classifies any premeditated murder or murder in an ambush as first degree murder. Article 257 defines an ambush as "lying in wait, in a place or places, for a person for the purpose of killing him or committing acts of violence against him".

A number of articles of the Code of Penal Procedure deal with intentional violence who is punished by appropriate penalties (art. 264, relating to injury, blows and other acts of violence or assault) having caused illness or more than 15 days' incapacitation for work, calls for a sentence of from two months' to five years' imprisonment and a fine (the period of imprisonment may be increased to between one and five years if the acts of violence has led to mutilation, blindness, or any other infirmity); in the case of accidental homicide, the offender risks a prison sentence of from 10 to 20 years. Article 256 further increases the relevant sentences in cases of premeditation or ambush;

Unintentional violence carries lighter sentences;

The Penal Code contains specific provisions specifying the punishment for perpertrators of acts of violence against minors and deliberate deprivation of food or care which endanger their health (arts. 269 to 272); the prison sentences range from 3 to 20 years depending on the consequences of the violence or deprivation. The relevant sentence is one of life imprisonment if the deprivation has caused unintentional death attributable to habitual practices.

"If the blows, injuries, acts of violence, assault or deprivation were committed with intent to cause death, the offender shall be punished as for murder or attempted murder" (art. 271);

Article 274 prescribes a sentence of life imprisonment for anyone guilty of castration. If death has resulted therefrom, the offender is punishable by death;

The Penal Code also establishes penalties for the administration of substances that are harmful to health (arts. 275 and 276) and for threats (arts. 284 et seq.);

A section of the Code is devoted to infringements of individual freedom, the inviolability of the home and abduction;

Various articles are concerned with kidnapping and sequestration.

Article 291

"Whosoever kidnaps, arrests, detains or sequesters a person without an order from the established authorities, except in those cases authorized or ordered by law, shall be sentenced to a period of rigorous imprisonment of from 5 to 10 years. The same penalty shall apply to whosoever allows a place to be used in order to detain or sequester the person. If the detention or sequestration has been for more than a month, the penalty shall be from 10 to 20 years' imprisonment." It should be noted that the wording of this article in no way makes it possible to justify such acts by an order given, as the conditions laid down are cumulative: individuals may not be arrested without an order from the established authorities or in circumstances other than those allowed by law.

Article 292

"If the arrest or kidnapping has been carried out by a person or persons wearing an official uniform or insignia or items that appear to be official under the terms of article 246, or using a false identity or a false order from the authorities, the penalty shall be life imprisonment. The same penalty shall apply if the arrest or kidnapping has been carried out using motor transport or if the victim has been threatened with death."

Article 293

"If the victim of the kidnapping, arrest, detention or sequestration has been physically tortured, the culprits shall be sentenced to death."

Article 293 bis

"Whosoever, by use of violence, threat or fraud, kidnaps a person or has a person kidnapped, regardless of that person's age, shall be sentenced to from 10 to 20 years rigorous imprisonment. If the victim has been physically tortured, the culprit shall be sentenced to death. If the kidnapping was to obtain payment of a ranson, the culprit shall also be sentenced to death."

Moreover, the Penal Code also prescribes punishment for damage to a person's honour or standing (damage to honour, injurious behaviour, defamation, etc.) as well as for exposure and neglect of children or disabled persons, kidnapping and failure to speak for minors, abandonment of the family and immoral acts. Thus, rape is punished by from 5 to 10 years' imprisonment. The penalty may be extended to between 10 and 20 years if the rape has been committed against a minor aged under 16. If the rapist is a relative of the victim or a person with authority over her, this constitutes a further aggravating circumstance.

59. Attempted crime and complicity are punished in accordance with articles 30, 31, 42, 43, 44 and 45 of the Penal Code.

Article 5

60. This article is concerned with the establishment of the State party's jurisdiction over the offences referred to in article 4.

61. The general rules of jurisdiction apply to acts of torture and other cruel, inhuman or degrading treatment. Algerian courts have jurisdiction over any offence committed on the national territory or when the offender is of Algerian nationality.

62. As regards offences committed on board a ship or aircraft:

Algerian courts have jurisdiction over crimes or offences committed on the high seas and on board ships sailing under the Algerian flag, whatever the nationality of the offender, and over crimes and other offences committed on board a foreign merchant vessel in an Algerian seaport (Code of Penal Procedure, art. 590).

Algerian courts also have jurisdiction over crimes and other offences committed on board Algerian aircraft, whatever the nationality of the offender, or on board foreign aircraft if the author or victim is an Algerian national or if the aircraft lands in Algeria after the crime or offence (Code of Penal Procedure, art. 591).

63. With regards to crimes and offences committed abroad, articles 582 to 589 of the Code of Penal Procedure establishes the rules governing the jurisdiction of Algerian courts, which may be summarized as follows:

Any act classified as a crime, punishable under Algerian law and committed by an Algerian, may be prosecuted and judged in Algeria, even if the accused acquired Algerian nationality only after commission of the crime;

Anyone who, on Algerian territory, has become an accessory to a crime committed abroad may be prosecuted and tried in Algeria;

If any act constituting one of the elements of an offence has been carried out in Algeria, the offence is deemed to have been committed on Algerian territory.

Article 6

65. Under this article, States parties are required to take into custody any person suspected of torture who is on their territory or to take other legal measures necessary to ensure his presence. The State party must provide safeguards in respect of the detention or measures and shall immediately make a preliminary inquiry into the facts.

66. Failing application of the rules relating to extradition, the general rules of the Code of Penal Procedure apply to the exercise of the public right of action and to the pre-trial on proceedings. In this connection, the Code of Penal Procedure defines the manner in which offences are to be identified and proved, the competence of the judicial police, of the department of public prosecution and of the examining magistrate, and a number of its provisions deal with crimes and offences in flagrante delicto and with the preliminary investigation.

67. The judicial police function is exercised by the judges, officers, agents and officials designated by the Code of Penal Procedure and is directed by the government procurator. The judicial police are responsible for establishing breaches of criminal law, for gathering the evidence and seeking the offenders until information has been laid before a judge. When the information has been laid, the judicial police perform acts delegated by the examining jurisdictions and carry out their orders. Criminal investigation officers also take complaints and accusations and carry out preliminary investigations. In the case of flagrante delicto, the criminal investigation officer who receives the information passes it on immediately to the government procurator and visits the scene of the crime promptly in order to establish the relevant facts. Criminal investigation officers are required to prepare a report on their operations and to inform the government procurator without delay of any crimes or offences which come to their knowledge.

68. The department of public prosecution exercises the public right of action in the name of society and demands the enforcement of the law. The government procurator receives reports, complaints and accusations and decides what steps to take thereon. If a person is suspected of having committed acts of torture classifiable as a crime, the government procurator instructs the examining magistrate to initiate examination proceedings.

69. The examining magistrate is responsible for beginning the investigation. He is seized by an originating application from the government procurator or by a complaint accompanied by the bringing of criminal indemnification proceedings. In performing his functions, he may directly call on the services of the police and the armed forces.

70. In cases involving flagrante delicto, and if the examining magistrate has not yet been seized, the government procurator may issue an arrest warrant against any person suspected of involvement in the offence. He questions the suspect in the presence of the latter's counsel, if present. If the person presents himself freely, accompanied by his counsel, he is questioned in the latter's presence. If the person cannot provide satisfactory guarantees as regards representation, the government procurator may issue a detention warrant against him and must immediately seize the court in accordance with flagrante delicto procedure. The case must be heard within eight days of issue of the detention warrant. It is pointed out that flagrante delicto

procedure follows strict rules laid down by the Code of Penal Procedure which are designed to safeguard the rights of the defence and to prevent misuse of the procedure. This procedure is prohibited in the case of press and political offences and may not be used against minors under the age of 18 (Code of Penal Procedure, arts. 58 to 62).

71. Criminal investigation officers carry out a preliminary investigation, either on the instructions of the government procurator or ex officio, into any offence which comes to their knowledge. Conduct of the preliminary investigation is covered by guarantees to safeguard the rights of the individual (Code of Penal Procedure, arts. 44 to 50, 64 and 65). Accordingly, searches, domiciliary visits and the seizure of evidence may be carried out only with the express consent of the person at whose home the operation takes place, given in writing by the person concerned, who may be assisted by a third person of his choice if he is unable to write (Code of Penal Procedure, art. 64 as amended). The search may take place only with the written authorization of the government procurator or the examining magistrate (Code of Penal Procedure, art. 45). Failure to observe some of these guarantees entails the nullity of the procedure (Code of Penal Procedure, art. 48).

72. If, for the purposes of the inquiry, the criminal investigation officer has to detain a person, he "must immediately inform the government procurator, and the period of detention may not exceed 48 hours. He shall, moreover, provide the detained person with all the necessary means immediately and directly to contact his family and receive visits" (Code of Penal Procedure, art. 51, sect. 1, as amended). "If there is sufficient serious and concordant evidence on which to charge a person, the person must be brought before the government procurator and may not be kept in custody for more than 48 hours" (Code of Penal Procedure, art. 51, para. 2). "On expiry of the period of custody, the detainee shall undergo a compulsory medical examination, either at his own request, or at the request of his counsel or family. The examination shall be carried out by a doctor chosen by the person concerned who shall be informed of this right" (Code of Penal Procedure, art. 51, sect. 4 as amended).

73. Breach of the provisions concerning the duration of police custody shall render the criminal investigation officer liable to the penalties for arbitrary detention (Code of Penal Procedure, art. 51, section 5). We have already seen that the above-mentioned guarantees have been made constitutional principles (Constitution, art. 45).

74. In criminal cases, the pre-trial proceedings are compulsory (Code of Penal Procedure, art. 66). Pursuant to the law, the examining magistrate carries out all the investigatory acts he deems necesssary for ascertaining the true facts. The suspect is summoned for questioning and, if he fails to appear, an arrest warrant is issued by the examining magistrate. Upon the suspect's first appearance, the magistrate verifies his identity, informs him in detail of each of the acts he is suspected of committing and of his right to remain silent. He also informs him of his right to choose a counsel and if he fails to do so, the magistrate appoints a counsel ex officio, at his request (Code of Penal Procedure, art. 100). "The suspect may communicate freely with his counsel from the moment he is detained. The examining magistrate may prohibit communication for a period of 10 days, although in no case may this prohibition affect the suspect's counsel (Code of Penal Procedure, art. 102, as amended).

75. Execution of judicial warrants is covered by the guarantees provided in articles 109 to 122 of the Code of Penal Procedure. Accordingly, "the suspect brought before the examining magistrate pursuant to an arrest warrant must be immediately questioned, in the presence of his counsel. If it is impossible to carry out the examination immediately, he shall be brought before the government procurator who shall require the magistrate responsible for the examination procedure, or in his absence, any other magistrate of the court to examine him immediately, failing which he shall be released" (Code of Penal Procedure, art. 112, as amended).

Any suspect arrested pursuant to an arrest warrant who is held for more than 48 hours in a local prison without having been examined, shall be deemed to be arbitrarily detained. Any magistrate or official who has ordered or knowingly tolerated such a detention shall be liable to the penalties established by the provisions on arbitrary detention (Code of Penal Procedure, art. 113).

The examining magistrate may issue a detention warrant only after an examination and if the offence carries a correctional penalty of imprisonment or a heavier penalty (Code of Penal Procedure, art. 118).

The suspect is examined within 48 hours of his being placed in detention. Failing this, and on expiry of this period, the provisions of articles 112 and 113 apply (Code of Penal Procedure, art. 121).

76. Pre-trial detention is an exceptional measure. Article 123, as amended, of the Code of Penal Procedure clearly establishes this principle and adds "however, if the obligations relating to judicial control are inadequate, pre-trial detention may be ordered or maintained in the following circumstances:

(a) If it is the only means of preserving the proof or material evidence or of preventing pressure from being exerted on witnesses or victims, or of preventing collusion between the suspects and their accomplices which might hamper the discovery of the true facts.

(b) If it necessary to protect the suspect, to put an end to the offence or to prevent its repetition.

(c) If the suspect wilfully fails to comply with his obligations arising from the judicial supervision ordered."

77. It should be emphasized that these procedural rules apply without discrimination to Algerian citizens and to foreigners. The Constitution states that justice is based on the principles of legality and equality and that "the person and property of any foreigner lawfully on the national territory are entitled to the protection of the law".

78. Current legislation entitles any prosecuted, accused or detained foreigner to procedural guarantees (the rights of the defence, to counsel, visits, etc.). He may even be entitled to pre-trial release. Article 132 of the Code of Penal Procedure provides that "whenever a foreigner does not obtain pre-trial release as of right, he may obtain it subject to the obligation to provide bail". The bail must guarantee, in particular, that the accused will be represented at all the procedural acts relating to the

execution of the judgement and the payment of costs. Moreover, article 54 of the Penal Institutions and Re-education Code states that foreign detainees may be visited by their country's consular representative.

79. Moreover, the mutual judicial assistance agreements which Algeria has concluded with many countries define the bases of bilateral cooperation in this sphere.

Article 7

80. This article makes it obligatory for a State party which does not extradite a person alleged to have committed torture to submit the case to its competent authorities for the purpose of prosecution, in the same manner as in the case of any ordinary offence of a serious nature, and to guarantee the person fair treatment at all stages of the proceedings.

81. The earlier comments in respect of articles 2, 4, 5 and 6 also apply to article 7 as regards classification of the offence, the penalties that apply, the prosecution procedure and fair treatment of foreigners.

82. As regards the obligation either to extradite or to prosecute a person suspected of torture, in the absence of specific provisions on the subject in Algerian legislation, the provisions of the Convention apply (see supra. Algeria's international commitments).

Article 8

83. Article 8 states that the offences referred to by the Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between States parties.

84. The conditions of extradition are those defined by the Code of Penal Procedure, which may be interpreted and/or supplemented by the provisions of the Convention against Torture, which, having been duly ratified by Algeria has, pursuant to the Constitution, acquired precedence over the law. The provisions of the Convention may not, however, interfere with the fundamental principle of the Constitution that a political refugee may in no case be handed over or extradited.

Article 9

85. Under this article, States parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

86. In addition to the provisions relating to extradition procedure, the Code of Penal Procedure establishes a number of measures for mutual judicial assistance in criminal matters, subject to reciprocity:

> In the case of criminal prosecution on other than political grounds in a foreign country, rogatory commissions from the foreign authorities are received through the diplomatic channel, are transmitted to the Ministry of Justice and are executed, if appropriate, in accordance with Algerian law (Code of Penal Procedure, art. 712). Similarly, foreign

procedural and judicial acts are received through the diplomatic channel and served, at the request of the department of public prosecution, by a competent official (Code of Penal Procedure, article 722).

> "When, in a criminal case being examined abroad, the foreign government deems necessary the transmittal of evidence or documents in the possession of the Algerian authorities, the request therefor shall be made through the diplomatic channel. It shall be acted upon, unless there are any special reasons for not doing so, subject to the requirement that the evidence and documents be returned as promptly as possible" (Code of Penal Procedure, art. 723).

Article 724 deals with the terms and conditions of appearance abroad of a witness residing in or detained in Algeria.

87. Algeria has signed judicial agreements with some 30 countries (France, Tunisia, Egypt, Mauritania, Belgium, Bulgaria, Poland, Hungary, Romania, Czechoslovakia, Syrian Arab Republic, USSR, Yugoslavia, Mali, United Arab Emirates, Niger, Libyan Arab Jamahiriya, Turkey and Cuba).

Article 10

88. Under this article, States parties are required to ensure that education and information are provided regarding the prohibition against torture and to ensure the training of the relevant personnel.

89. Article 5 of the Education and Training (Organization Act) Ordinance No. 76-35 of 16 April 1976 states that the Algerian educational system shall:

> "Instil in young people the principles of justice and equality among citizens and peoples and bring them to combat any form of discrimination;
>
> Provide an education that promotes understanding and cooperation among peoples on behalf of universal peace and agreement among nations;
>
> Develop education that is consonant with human rights and fundamental freedoms."

In Algeria, from a very young age, all citizens are taught the principle of equality among all human beings, tolerance, respect for others, rejection of racial prejudice, love and understanding among peoples. A civic, moral and religious education course is provided for this purpose in all educational establishments.

90. The prohibition against torture and the obligation to respect human rights are constitutional principles and as such constitute the foundations of the syllabuses of general education and specialized training. In the universities, and in particular in the law and legal science faculties at Algiers and Oran, courses are provided on human rights, the rights of refugees and humanitarian law, at both the degree and the post-graduate level. Various research topics have focused on human rights and have been chosen by students as the subject of Master's theses. In addition, several schools and institutes hold specialized courses for judges, central and local administrative officials and police and gendarmerie personnel, and personnel from the penal administration and the security and armed forces. The tenor

and scope of these principles are also covered by the basic training programmes of other professions that might be connected with the exercise of the fundamental rights of the individual, such as, in particular, doctors and journalists.

91. Information is governed by Act No. 90 07 of 3 April 1990, whereby Act No. 82 01 of 6 February 1982 (Information Code Act) was amended in order to give full effect to the constitutional provisions relating, in particular, to the multi-party system, effective participation by all in political, economic, social and cultural life, freedom of conscience and of opinion, intellectual, artistic and scientific creation and freedom of expression, association and assembly. The new Act stipulates that "the right to information shall be freely exercised with respect for human dignity" by all written, radio, audio or televised media; publications and mass media may belong either to the public sector or to political associations or individuals or bodies corporate under Algerian law (arts. 3 and 11). The publication of periodicals is unrestricted and subject only to a declaration, made 30 days before the first issue appears, for the purposes of registration and to ensure truthfulness (art. 14). National and foreign periodicals and specialized reviews may not contain any illustration, story, information or item that infringes human rights or seeks to justify racism. They also must not contain any advertising or announcement likely to promote violence and delinquency (art. 26). "The institutions, bodies or authorized associations responsible for human rights and the protection of children may exercise criminal indemnity action rights" (art. 27). The exercise of the profession of journalist is protected. "In the case of violence or aggression against, attempted corruption or intimidation of or the clear use of pressure on a professional journalist in the performance of his work, his employer must seize the competent jurisdiction and bring criminal indemnification proceedings." Professional journalists' right of access to sources of information is recognized (art. 35). However, this article does not authorize them to divulge information that may, in particular, infringe the constitutional rights and freedoms of citizens (art. 36). Thus, direct or indirect justification, in any media, of acts classified as crimes or offences renders the author liable to between one and five years' imprisonment and a fine (art. 96).

92. Since the new Information Act came into force, a large number of daily newspapers and periodicals, some of them independent and others affiliated to a political party, have been added to the national press. The national press, television and radio regularly transmit information, reflecting various viewpoints, on the numerous debates, seminars, conferences and exhibitions devoted to the topic of human rights in Algeria. It is worth mentioning that on the occasion of the forty-second anniversary of the Universal Declaration of Human Rights, several political parties and associations held conferences, debates and seminars on human rights. Thus, the Algerian branch of Amnesty International held a conference on "Amnesty and Human Rights". The National Committee against Torture ran several lecture-debates on the subject of torture, including a radio roundtable. The Algerian League for the Protection of Human Rights held a press conference in Algiers, to which the national and international press were invited, as well as lecture-debates and exhibitions on human rights in various localities. Several other cultural associations conducted debates on the theme of economic, social and cultural rights. For its part, the Algerian League for Human Rights held in Sidi Ferredj (Algiers),

from 8 to 11 December, a North African training seminar on human rights in which representatives of many other human rights associations of North Africa participated. The Algerian Minister of Justice, Mr. Benflisa, in his address to the seminar, said:

"It is with great pleasure that I welcome the holding here in Algiers, of the North African Seminar on Human Rights.

Mankind's deep aspiration for freedom, justice, progress and peace, has led to undeniable progress in the sphere of human rights. Nevertheless, 42 years on from the proclamation of the Universal Declaration of Human Rights, the issue is still a burning one both in our countries and throughout the world. The sheer scope of the multiple individual and collective freedoms and fundamental rights of all citizens in the political, economic, social and cultural fields is to a certain extent responsible for this state of affairs.

The continuing achievement and the sometimes intensive use of human rights perhaps reflects a certain desire to transform those precarious rights into inalienable ones, out of a frequently justified awareness of their inherent fragility. By means of national and international measures, through the action of numerous international, continental, regional and non-governmental institutions, organizations and associations, human rights and freedoms have gained increasing acceptance in a world which is resolved to drive tyranny and oppression back into their most remote lairs until all hopes placed in the primacy of law have been realized.

With the prevailing spirit of brotherhood, human rights concern all human beings, men, women and children, who all are equal in dignity and rights. These rights are reflected not only in the enjoyment of multiple freedoms; they also imply the definitive eradication of the horrendous spectre of torture, of all forms of servitude, of persecution, of arbitrary infringements and interference, and of cruel, inhuman or degrading treatment.

Human rights constitute the major feature of Algeria's political, economic, social and cultural development. The Constitution of 23 February 1989 explicity ushered in a set of individual and collective freedoms, the fundamental rights of citizens and promotion of the rule of law, in particular through the institution of an independent judiciary.

The protection of persons and their honour, property and privacy, freedom of conscience, opinion, creation, expression, association, assembly, information, electoral rights, the right to sue, the right to a defence, trade-union rights, the right to strike, the rights to education, work, protection of health and rest, and the right to seek remedy before the competent courts against acts violating citizens' fundamental freedoms and rights as recognized by the Constitution and the laws, are not only formally established but are enforced, in the belief that causes relating to the freedom, dignity and value of human beings are causes that are just.

The struggle to introduce human rights is a difficult, long and no doubt continuing one. It implies that informed consciences must invest all areas of expression and action, swelling the ranks of the enlightened militants fighting for this cause to ensure that human rights become permanently established. It calls on all human beings to accept their destiny, in the freedom and nobility of the human spirit.

In this delicate area, the heritage of all mankind, which implies active and action-oriented solidarity with all human rights causes throughout the world, in suffering Palestine, in Africa and everywhere else, human rights work must not be taken over or monopolized by any one group, but must be the prerogative of everyone without exception. The precious achievements of human rights must be constantly preserved in the interest of promoting a free society.

I wish you every success in your work and assure you of my full support and appreciation".

Article 11

94. This article requires States parties to keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons arrested, detained or imprisoned with a view to preventing any cases of torture.

95. The Code of Penal Procedure strictly governs pre-trial investigation procedures, search operations, interrogation and inquiry methods as well as police custody and pre-trial arrangements, and provides safeguards, having regard to the recognized right of the defence (see supra, commentary to art. 6, valid for both Algerians and aliens, and the observations concerning the revision of the Code of Penal Procedure, one object of which was to strengthen the right to defence and the safeguards that must be provided in case of police custody and pre-trial detention). It should be added that article 52 of the Code of Penal Procedure makes it compulsory for all officers of the judicial police "to enter on the record of the statement made by any person held in custody, the length of the questioning they underwent, the rest periods separating the interrogations and the date and time when the person was either released or brought before the competent judge. This entry must be accompanied, in the margin, by the signature of the person concerned or an indication of his refusal to sign. It must indicate the grounds for the custody. A similar entry must also be made in a special register, numbered and initialled by the Government Procurator, which must be kept for this purpose in all police or gendarmerie stations where persons may be held in custody".

96. With regard to supervision of the conditions of detention, the reader is referred to the commentary to article 2. It should be added that the Penal Institutions and Rehabilitation Code prohibits, "subject to penalties, staff responsible for the rehabilitation and social reintegration of detainees and all persons coming into contact with detainees, from acting either directly or indirectly on detainees so as to influence their defence case or their choice of counsel (art. 53). The Code also grants detainees the right "in case of violation of their rights to lodge a complaint with the head of the establishment. The latter shall examine the complaint, verify the accuracy of the allegations and deal with the complaint appropriately. In cases where the

alleged acts constitute a crime or offence, the head of the establishment must immediately refer the case to the Government Procurator attached to the court of his establishment's district and to the visiting magistrate. If no action is taken on his complaint, a detainee is entitled to appeal directly to the visiting magistrate. Detainees also have the right to lodge complaints with and submit their grievances to the official magistrates who are required to make periodic visits of inspection to prisons. Interviews take place without the presence of the prison staff" (art. 63). In practice, moreover, the right to make inspection visits has been extended to representatives of associations for the defence of human rights (Algerian human rights leagues, the Algerian branch of Amnesty International, the National Committee against Torture). The Code also provides that prison personnel "may not use force towards detainees except in cases of self-defence, escape attempts or resistance to orders given through violence or physical inertia. When personnel must resort to force, they may use only such force as is strictly necessary" (art. 71). The Code adds that senior and other prison personnel "who, through negligence, carelessness or non-observance of rules, jeopardize detainees' health or order or safety in the establishment, are liable to a prison term of one month to two years" (art. 204).

Article 12

97. By this article, States parties are required to ensure that their competent authorities proceed to a prompt and impartial investigation wherever there are serious allegations of torture in their territory.

98. As indicated above, public action may be engaged either by the Government Procurator's office or by the party injured by a violation, who may lodge a complaint and apply for criminal indemnification to the competent examining magistrate. Furthermore, if officers of the judicial police learn of a violation, they must conduct preliminary inquiries, either automatically or on the instructions of the Government Procurator.

99. We have also seen that detainees are entitled to lodge a complaint with the head of the prison establishment, who must immediately refer it to the Government Procurator or the visiting magistrate or other official having responsibility for inspecting the establishment.

100. The Code of Criminal Procedure, in articles 206 to 211, also provides for close monitoring of the activities of officers of the judicial police and officials and officers in charge of certain judicial police functions. This monitoring function is performed by the indictment division of every court. The court is seized, either by the Government Procurator or by its President, of any reported lapses by officers of the judicial police in the performance of their duties. It may be seized of its own motion, on examination of the proceedings submitted to it. Officers of the judicial police responsible for military security may be judged only by the indictment division at Algiers, on referral from the Government Procurator, with the approval of the Military Procurator of the Republic attached to the territorially competent military tribunal (Code of Penal Procedure, art. 207). Once it is seized, the indictment division orders an inquiry and may, without prejudice to any disciplinary sanctions, address comments to the officer of the judicial police or decide to suspend him from his duties either temporarily or permanently (arts. 208 and 209). If there has been a violation of criminal law, it also orders the file to be transmitted to the Government Procurator.

101. Since Algeria's ratification of the Convention, allegations of ill-treatment of detainees at the Blida prison have been brought to the attention of the competent authorities. A commission of inquiry was set up, composed of the Government Procurator, judges and representatives of the two Algerian human rights leagues and the National Committee against Torture. The detainees were heard in the presence of these representatives of associations for the defence of human rights and of their counsel. A joint report was prepared upon completion of this inquiry. Legal proceedings were initiated. The file is under examination and the judicial proceedings are taking their course. Meanwhile those allegedly responsible for ill-treatment of the detainees have been relieved of their functions.

Article 13

102. Under this article, States parties must ensure that any individual who alleges he has been subjected to torture has the right to complain to the competent authorities and steps must be taken to protect the complainant and witnesses.

103. The authorities with responsibility for receiving complaints are the Government Procurator and his assistants. The officers of the judicial police are required promptly to inform the Government Procurator of any crimes or other offences that come to their attention. Victims have the right to complain either directly to the Government Procurator or his assistants or by exercising public right of action before the competent courts. They are also entitled, by filing a complaint, to claim criminal identification before the competent examining magistrate. In the event that the complainant or his witnesses are in danger, the Government Procurator and his assistants must provide them with protection.

Article 14

104. States parties must ensure in their legal system that victims obtain redress and compensation.

105. Besides being able to engage public action, the victim is entitled to file a claim for criminal damages: "a criminal indemnity action for damages caused by a crime, offence or violation is available to anyone who has personally suffered damages caused by the violation" (Code of Penal Procedure, art. 2). Criminal indemnity proceedings may be brought at the same time as public action and before the same court. This court is competent whoever the natural or legal person of public law responsible for the damage may be. Criminal indemnity proceedings are admissible for all types of damage, material, physical or moral, (Code of Criminal Procedure, art. 3). Criminal indemnity proceedings may also be initiated separately from public action.

106. The Civil Code provides that "anyone who suffers an unlawful infringement of rights as an individual may demand the cessation of the infringement and compensation for any harm it has caused" (art. 47).

Article 15

107. Under this article States parties must ensure that any statement obtained as a result of torture is not used as evidence in any proceedings, except against the person accused of the torture.

108. In civil cases, a confession is the recognition in court of a juridical act during the proceedings relating to the act by the party alleged to have committed it (Civil Code, art. 341). The conditions laid down by this article exclude any statements obtained by torture or any other form of violence, since in order to be binding against the person who has made it, a confession must be made during the proceedings in which the case is tried.

109. In criminal cases the Code of Penal Procedure leaves confession, like all evidence, to the evaluation of the judge (art. 213), who decides in accordance with his innermost conviction (art. 212). He will therefore disregard any confession obtained under torture, without prejudice to any criminal proceedings that may be brought against the perpetrator of the violence, for which, as already indicated, penalties are laid down by the Penal Code. The Code also contains explicit provisions making punishable the use of torture to obtain confessions. Article 110 bis, section 3, of the Penal Code states that "any official or officer who uses or orders the use of torture to obtain confessions shall be liable to a prison term of six months to three years". As already mentioned, certain provisions of the Code of Penal Procedure require officers of the judicial police to arrange a medical examination for any person held in police custody, at the request of such person, his family or his counsel, and in any event to inform him of his right to make such a request and to be examined by a doctor of his choice. The medical examination enables a person held in custody to obtain evidence of any acts of torture or other form of violence committed against him during interrogation. Officers of the judicial police are also obliged to take the person's deposition in the prescribed form, on which must be entered either his signature or an indication of his refusal to sign (art. 52). All depositions or reports shall have probative value only if they are correct as to form and if their author has acted in the performance of his duties and has reported on a matter within his competence which he has personally seen, heard or observed". The victim may also invoke nullity of the information. Articles 157 and 161 of the Code of Penal Procedure deal with this question. Thus the requirements concerning interrogation of the accused and hearing of any claim for indemnification, must be observed under pain of nullity of both the act itself and the subsequent proceedings. There is also nullity if the rights of the defence or of any party in the case have been violated. A party may always, in his own interest, refrain from invoking nullity that has been declared. Such a waiver must be explicit. Thus the victim may relinquish his right to invoke the nullity of information constituting evidence of ill-treatment he has undergone, in order to use the evidence against the person accused of torture.

110. The Penal Code, for its part, provides for punishment of any infringement of liberty committed by officials or employees of the State (arts. 107 to 111), including the following:

> Refusing to act on a complaint of illegal or arbitrary detention (5 to 10 years imprisonment);
>
> Receiving a prisoner without a proper detention warrant, refusing to present this prisoner or his file to the authorities empowered to visit him (six months' to two years' imprisonment and a fine);

Objection by any judicial officer to the medical examination of a person held in police custody (one to three months' imprisonment and/or a fine); Committing or ordering torture to obtain confessions (six months' to three years' imprisonment).

111. The Penal Code also establishes penalties for corruption and influence peddling. Corruption is punishable by a prison term of two years for officials, arbitrators, doctors and others. This penalty is increased to a prison term of 5 to 20 years for a judge and 5 to 10 years for a clerk of court. The Code states in article 129 that anyone who uses assault or threats to obtain either the commission of or abstention from an act or favours or advantages, whether or not such coercion has been effective, shall be liable to the same penalties as those provided in the articles against the persons guilty of corruption.

Article 16

112. Article 16 provides that States parties shall undertake to prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 of the Convention, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The provisions of the Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion. The prohibition of any form of physical or mental violence is a constitutional principle. The commentary to the articles of the Convention against Torture underline the fact that national legislation prohibits not only torture but also all other types of acts assimilable to torture or to cruel, inhuman or degrading treatment or punishment as well as threats of violence or ill-treatment.

114. In addition, many provisions of Algerian legislation prohibit officials and all other public servants from committing a number of acts, omissions and oversights that may be prejudicial to human rights. Some of these provisions have already been mentioned in the article-by-article commentary, and the reader is referred to them. The following are some other examples taken from the Penal Code:

"An entire section is devoted to infringements of freedom. This includes article 107, which provides: 'When an official has ordered or committed an act that is arbitrary or detrimental, either to individual freedom or to the civil rights of one or more citizens, he shall be liable to long-term rigorous imprisonment for 5 to 10 years'. Article 108 states that 'the offences referred to in article 107 entail the personal liability of their perpetrator and of the State, except where the latter has recourse against the said perpetrator';

Another section establishes penalties for abuse of authority against individuals and abuse of authority against the State (Penal Code, arts. 135 and 140). Thus, "any administrative or judicial official, any police officer or commander and any officer of the law who, acting in his

official capacity, enters the home of a citizen against the latter's will, shall, except in the cases provided by law or if the legal formalities have not been complied with, be liable to a prison term of two months to one year and a fine of DA 500 to 300, without prejudice to the application of article 107" (art. 135);

Article 143 increases the penalties for certain crimes and offences committed by public officials or officers;

In addition to cases for which the law establishes special penalties, involving crimes or offences committed by public officials or officers, those officials or officers who participate in other crimes or offences which they are responsible for monitoring or punishing, are liable to the following penalties:

- For ordinary offences, the penalty is double the penalty established for the offence;

- For crimes, they are sentenced to either of the following:

  (a) Long-term rigorous imprisonment for 10 to 20 years, if the crime carries a penalty of long-term rigorous imprisonment for 5 to 10 years;

  (b) Rigorous imprisonment for life, if the crime carries a penalty of long-term rigorous imprisonment for 10 to 20 years.

In cases other than those just described, the ordinary penalty applies, without aggravation".

115. Part I of this report mentions the numerous international conventions to which Algeria is a party. It is understood that the provisions of these conventions remain valid, form an integral part of internal law and may be invoked to prohibit any act which, while not being assimilated to torture, might be regarded as constituting cruel, inhuman or degrading treatment deserving of punishment. This is true in particular of breaches of the provisions of the conventions prohibiting slavery, the slave trade, apartheid, racism, discrimination in all its forms and forced labour, and those governing the status of refugees and stateless persons.